

1-1-2012

Acting for the Left Behind: How the Native CLASS Act Could Close the Gaps in American Indian Education

Aaron J. Stewart

Follow this and additional works at: <https://digitalcommons.law.ou.edu/ailr>



Part of the [Education Law Commons](#), and the [Indian and Aboriginal Law Commons](#)

Recommended Citation

Aaron J. Stewart, *Acting for the Left Behind: How the Native CLASS Act Could Close the Gaps in American Indian Education*, 36 AM. INDIAN L. REV. 347 (2012),
<https://digitalcommons.law.ou.edu/ailr/vol36/iss2/3>

This Comment is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian Law Review by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

COMMENTS

ACTING FOR THE LEFT BEHIND: HOW THE NATIVE CLASS ACT COULD CLOSE THE GAPS IN AMERICAN INDIAN EDUCATION

Aaron J. Stewart*

I. Introduction

A new bill in the Senate has many American Indians wondering whether the educational future of Native peoples is indeed bright, or whether the status quo will continue. On June 23, 2011, Senator Daniel Akaka introduced the Native Culture, Language, and Access for Success in Schools Act (Native CLASS Act).¹ This bill's current thrust is to amend parts of the Elementary and Secondary Education Act of 1965,² and to revise and supplement the No Child Left Behind Act of 2001.³ The bill is currently in the committee hearing stage and will most likely endure numerous amendments.

This comment will examine how this bill will affect American Indian education. The educational status of American Indian students in the United States is a dismal matter. American Indians drop out of school at a rate higher than any other minority in the U.S.⁴ Even massive educational overhauls such as No Child Left Behind, have failed to raise the standards for this nation's most educationally at-risk population — American Indians.

The CLASS Act bill seeks to change this nation's educational landscape. The Act attacks the problem head on, seeking to increase tribal control of education and adjust the teaching and learning methods utilized in classrooms to better serve tribal children. It is the hope of both the tribes and the federal government that Native students will thrive, where before they failed.

However, there is no easy solution or quick-fix strategy. Many pitfalls threaten the effectiveness of the plan. It is vital that the CLASS bill not be another failed educational experiment, but rather a catalyst for changing the way American Indians access knowledge. Therefore, the CLASS Act must

* Second-year student, University of Oklahoma College of Law.

1. S. 1262, 112th Cong. (2011).

2. Pub. L. No. 89-10, 79 Stat. 27.

3. Pub. L. No. 107-110, 115 Stat. 1425 (2002).

4. *American Indian School Dropouts and Pushouts*, AM. INDIAN EDUC., N. ARIZ. UNIV., <http://jan.ucc.nau.edu/~jar/AIE/Dropouts.html> (last visited Aug. 29, 2012).

be scrutinized and crafted in a way that will establish lasting and successful change in the educational systems of Indian Country.

This comment will first consider the history of American Indian education in the United States. Next, this comment will examine the current state of Native education. Third, it will demonstrate the changes that will result if the Native CLASS Act is enacted in its current form. Fourth, it will analyze the benefits and drawbacks of the Native CLASS Act, and the possible effect it will have on Indian education.

Finally, this comment will propose a broad framework in which to implement provisions of the bill in order to increase tribal autonomy. In its current form, the Native CLASS Act merely raises hopes, but fails to incorporate significant change to accomplish its intended goals. The bill's provisions must be restructured to maximize tribal control so that it can truly make a positive impact on American Indian education.

II. How It All Began: American Indian Education Since 1730

The history of American Indian education is best described as a series of shifting priorities. As time has progressed, the primary goal in educating American Indians has fluctuated, producing different policies with rather similar results. Those interests can be chronologically described as (1) Christianization and civilization in the colonial period, (2) land acquisition and coercive assimilation in the treaty period, (3) boarding school assimilation in the late nineteenth and early twentieth century, (4) tribal autonomy and manual schools in the 1920s, (5) assimilation in the 1940s, and (6) increased funding and tribal autonomy in the 1960s to present.⁵ Although each era represented different interests toward Native American education, the results achieved typically did not coincide with those interests.

The focus of Native American education in the colonial period was on cultural change. The new settlers attempted to train the Indians to acquire European knowledge and "change their ways accordingly" in hopes that the trained Indians would then educate future generations.⁶ While each colony had their own personalities, purposes, and methods of training the Indians,

5. MARGARET CONNELL SZASZ, INDIAN EDUCATION IN THE AMERICAN COLONIES, 1607-1783, at 4 (1988) [hereinafter, SZASZ, AMERICAN COLONIES]; K. TSINANINA LOMAWAIMA & TERESA L. MCCARTY, "TO REMAIN INDIAN:" LESSONS IN DEMOCRACY FROM A CENTURY OF NATIVE AMERICAN EDUCATION 68-73 (2006); S. REP. NO. 91-501, at 12-17 (1969);

6. SZASZ, AMERICAN COLONIES, *supra* 6 at 4.

Professor Margaret Szasz points out that they did share certain characteristics, namely, a three-step pattern:⁷

First, either the colony or a missionary organization established the fundamental principle necessary for Indian schooling: the need to Christianize and civilize the natives. . . . In the second step, one or more Euroamericans, either missionary or pious layman, emerged as the catalyst for the schooling movement. . . . The third essential ingredient of the planning stage demanded the involvement of at least one Indian. When this individual displayed some degree of competence in the basic tenets of Christianization and civilization, the success of the project was almost assured.⁸

These early schooling movements eventually spawned organized schools and colleges in the colonies such as the Boyle School in Virginia, which was operated by the College of William and Mary.⁹ In South Carolina, certain parish schools were opened which ultimately served Indian youths, though the schools were not specifically designed to educate Indians.¹⁰ Most schools in the Southeast were short-lived and unsuccessful.¹¹ In New England, the Great Awakening and the Enlightenment spurred meaningful Indian education in the mid-1700s.¹² It was those movements that launched Indian education experiments, such as boarding schools and religious schools on Indian settlements.¹³

In 1778, the United States government began taking control of Indian education through the use of treaties between the United States and Indian tribes.¹⁴ This era has thus been coined the "Treaty Period." The goal of civilizing Indians remained, but the government was motivated by the value of Indian land rather than by the altruistic goals of the colonial missionaries.¹⁵

During the Treaty Period, the United States signed treaties that promised resources for education, and Congress started funding those services in

7. *Id.* at 5.

8. *Id.* at 5-6.

9. *Id.* at 74.

10. *Id.* at 140-41.

11. *Id.* at 171.

12. *Id.* at 191-92.

13. *Id.* at 200, 204.

14. S. REP. NO. 91-501, at 11.

15. *Id.*

1802.¹⁶ During that time, the Commissioner of Indian Affairs was tasked with educating Indians. The Commissioner viewed assimilation as the best method for controlling the brutally uncivilized Indians.¹⁷ In an effort to encourage Indians to conform to an agricultural lifestyle, the United States government operated sixteen manual schools and eighty-seven boarding schools.¹⁸ The former were named for their purpose of teaching Indians “manual” skills, such as agriculture and mechanics.¹⁹ When the Treaty Period ended in 1871, Indian education was primarily instituted through the boarding school system.²⁰

The goal of the boarding school system was assimilation of Indians into American culture in an attempt to rescue them from their troubled lifestyle. Three priorities of Indian education emerged during the assimilation era. Those priorities were to teach the Indians to (1) read, write, and speak in English; (2) to encourage individual identity as opposed to tribal identity of Indian children by teaching them how to work and understand the possession of private property; and (3) to teach them Christianity.²¹

One government method for accomplishing these goals was the establishment of boarding schools away from reservation lands.²² Richard Pratt, a reformer who espoused the off-reservation industrial boarding schools, utilized this form of education to remove Indian children from the influence of their parents and instead push them toward assimilation into American culture.²³ The end goal was to “destroy the cultural foundations of Native Americans” in the hopes that such destruction would truly make the Indians strong American citizens.²⁴

Indian students were subjected to rigorous processes in order to civilize them, and school administrators considered discipline vital to this process.²⁵

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* at 11-12; *see also* MARGARET CONNELL SZASZ, EDUCATION AND THE AMERICAN INDIAN: THE ROAD TO SELF-DETERMINATION, 1928-1973, at 9-10 (1974) [hereinafter SZASZ, EDUCATION].

21. DAVID WALLACE ADAMS, EDUCATION FOR EXTINCTION: AMERICAN INDIANS AND THE BOARDING SCHOOL EXPERIENCE, 1875-1928, at 21-23 (1995).

22. SZASZ, EDUCATION, *supra* note 18, at 10.

23. BOARDING SCHOOL BLUES: REVISITING AMERICAN INDIAN EDUCATIONAL EXPERIENCES 13 (Clifford E. Trafzer et al. eds., 2006) [hereinafter BOARDING SCHOOL BLUES].

24. *Id.* at 14.

25. *See id.* at 108-09.

However, the boarding school system failed in its objective of assimilation, and by the turn of the century, the statistics and results made that failure clear.²⁶

In the 1920s, the policy shifted away from the boarding school system to a “New Deal” for the Indians. The Meriam Report was published in 1928 and was viewed as “the most significant investigation ever conducted into the field of Indian Affairs.”²⁷ The report revealed that tribes did not have control over their educational processes, and they received low-quality services.²⁸ The report lambasted the boarding school system, criticizing the “drudge work masquerading as vocational training,”²⁹ the “inadequate facilities,”³⁰ and the separation of children from their families.³¹

The new Indian Commissioner (John Collier) pushed for religious, cultural, and governing freedom for the American Indians.³² The government also worked to strengthen Indian social and cultural structures in an attempt to achieve greater tribal autonomy.³³ Despite these efforts, the federal government continued to control the off-reservation schools.³⁴ Also, instead of moving the schools away from vocational and manual education, the “New Deal” for Indians only maintained the status quo.³⁵ The federal government continued to interpret the needs of the Indian students as a need to learn vocational and manual skills.³⁶ This led to a paltry number of accredited Indian schools. Additionally, when an abundance of Indian students transferred from Indian schools to public schools in the 1940s, having accredited Indian schools became an afterthought.³⁷

Federal Indian policy in the 1940s thus reverted to an emphasis on assimilation.³⁸ Congress considered the withdrawal of federal services and termination of Indian trusts.³⁹ In 1952, the Bureau of Indian Affairs (BIA)

26. ADAMS, *supra* note 19, at 307.

27. S. REP. NO. 91-501, at 12 (1969).

28. *Id.* at 13.

29. LOMAWAIMA & MCCARTY, *supra* note 6 at 67 (internal quotation marks omitted).

30. S. REP. NO. 91-501, at 13.

31. *Id.*

32. LOMAWAIMA & MCCARTY, *supra* note 6, at 68.

33. S. REP. NO. 91-501, at 13.

34. *See* LOMAWAIMA & MCCARTY, *supra* note 6, at 68.

35. *Id.*

36. *Id.* at 73.

37. *Id.*

38. S. REP. NO. 91-501, at 13-14.

39. *Id.* at 14.

closed federally operated Indian schools in Idaho, Michigan, Washington, and Wisconsin, and loans to Native students were discontinued.⁴⁰ The BIA also shut down boarding and day schools, and moved the students to public schools.⁴¹ Boarding schools that remained open were once again used to assimilate Indian children into American culture and to separate children from their culture and ancestors on the reservation.⁴² Although Congress halted the termination policy, the BIA's actions still caused tribes to have significant doubts as to the motives and future plans of the federal government, creating an ongoing fear of termination.⁴³

The 1960s ushered in landmark legislation that created more funding for Indian students. The Elementary and Secondary Education Act of 1965 (ESEA) established funding for disadvantaged Indian students, regardless of whether they were in a BIA school or a public school.⁴⁴ A problem arose when public schools began to misappropriate federal funds. Public schools with Indian students requested and received funding, but then used the funding for general purposes, rather than on the needs of the Indian students as Congress intended.⁴⁵ It was during this period that tribes began to demand tribal control over their own government and education.⁴⁶ In 1975, Congress responded by passing the Indian Self-Determination and Education Assistance Act (ISDEA). Among other things, this Act enabled tribes to take control of their educational systems by contracting with the BIA to run their own schools.⁴⁷

III. Where We Stand: Current Programs and Status of Indian Education

American Indian education currently falls into three different categories: private, public, and BIA schools. Currently, "[n]inety percent of Native American students attend public schools with their Non-Native peers,"⁴⁸ and only 7% attend BIA/Bureau of Indian Education (BIE) operated

40. *Id.*

41. *Id.*

42. *Id.*

43. S. REP. NO. 91-501, at 14-15.

44. *Id.* at 16.

45. SZASZ, EDUCATION, *supra* note 18, at 185.

46. LOMAWAIMA & MCCARTY, *supra* note 6, at 116.

47. *Id.* at 117.

48. Scott Sparks, *Classroom and Curriculum Accommodations for Native American Students*, 35 INTERVENTION SCH. & CLINIC 259, 259 (2000).

schools.⁴⁹ The Elementary and Secondary Education Act (ESEA) and the No Child Left Behind Act of 2001 (NCLB) are primarily responsible for governing Indian education law as it relates to public schools.⁵⁰ BIA/BIE schools are mainly governed under the ISDEA, the Educational Amendments of 1978, and the No Child Left Behind Act of 2001.⁵¹

In the public schools that educate American Indians, there are three main funding programs that provide money to eligible schools serving Indian students. These programs give schools extra funds for special programs in order to support American Indian students.

The first of these programs is the Johnson O'Malley program, which was implemented by the Johnson O'Malley Act of 1934.⁵² This Act allocates federal funding to eligible tribes and public schools to meet the educational needs of Indian students.⁵³ Schools affected by contracts under the Johnson O'Malley Act are required by law to form an Indian Education Committee. This committee is tasked with various rights and responsibilities concerning organizing curriculum, evaluating programs and performance, and aiding in budgeting talks.⁵⁴ The Indian Education Committee must comprise of local student parents who create an Educational Plan.⁵⁵ Once approved, the funds pay for the programs proposed in the Educational Plan, such as student incentive programs, field trips, and tutors.⁵⁶

The Johnson O'Malley Program underwent budget cuts and organizational changes during the Bush administration,⁵⁷ but the National Indian Education Association is fighting to restore appropriated funding to

49. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., STATUS AND TRENDS IN THE EDUCATION OF AMERICAN INDIANS AND ALASKAN NATIVES 30 (2005), available at http://nces.ed.gov/pubs2005/2005108_1.pdf.

50. *History of Indian Education*, United States Department of Education, <http://www2.ed.gov/about/offices/list/oese/oie/history.html> (last visited Sept. 9, 2012).

51. *The Bureau of Indian Education (BIE)*, BUREAU OF INDIAN AFFAIRS, <http://www.bia.gov/WhatWeDo/ServiceOverview/IndianEducation/index.htm> (last visited Feb. 24, 2012).

52. Melody McCoy, Indian Educ. Legal Support Project, Native Am. Rights Fund, Tribalizing Indian Education 9 (Oct. 1997), available at <http://www.narf.org/pubs/edu/yellow.pdf>.

53. *Id.*

54. See 25 C.F.R. §§ 273.15-273.16 (2006).

55. JOHNSON O'MALLEY, <http://johnsonomalley.com/default.html> (last visited Feb. 24, 2012).

56. *JOM Programs*, JOHNSON O'MALLEY, <http://johnsonomalley.com/funded.html> (last visited Feb. 24, 2012).

57. See *NJOMA Assessment Hearings*, NAT'L JOHNSON O'MALLEY ASS'N, 1 (Oct. 21, 2008), http://njoma.com/uploads/DocLib-NJOMA_Assessment_Hearings.pdf.

at least \$24 million, as opposed to the current budget of \$21.4 million.⁵⁸ While \$24 million had been appropriated, actual funding dipped to as low as \$16.4 million in 2006.⁵⁹ These funds are spread over 250,000 students, which only allots around \$65 per student.⁶⁰

The second major funding program, the Impact Aid Laws of 1950, allowed educational agencies to request funding for areas impacted by the acquisition of land by the federal government.⁶¹ The law includes provisions for students on Indian lands, and requires that parents be allowed to voice opinions on the programs. The law also ensures that tribal entities and parents are granted the opportunity to be involved in the planning and developing of the proposed programs.⁶² Tribes can also file complaints against school districts for violations of the program.⁶³ The funding program essentially aims to ensure Indian children participate in the school programs to the same extent of other students.⁶⁴

The third funding program is provided for in the ESEA and gives additional supplemental funding for "Chapter 1 and Bilingual Education" programs.⁶⁵ The law allows American Indians to apply for assistance with language education.⁶⁶ Chapter 1 funding (now known as Title 1 funding) provides funds for schools in high-poverty areas.⁶⁷ These programs typically help disadvantaged youth with basic academic skills and provide bilingual instruction for students having trouble with the English language.⁶⁸

58. *Briefing Papers: 14th Annual NIEA Legislative Summit*, NAT'L INDIAN EDUC. ASS'N, 6 (Feb. 7-9, 2011), <http://www.niea.org/data/files/policy/2011sbriefingpapers.pdf>.

59. *NJOMA Update*, NAT'L JOHNSON O'MALLEY ASS'N, 1 (Sept. 29, 2008), http://njoma.com/uploads/DocLib-NJOMA_Update.pdf.

60. Nat'l Johnson O'Malley Ass'n, *JOM Program Handbook*, ALBUQUERQUE PUB. SCHS.-INDIAN EDUC., 9, <http://www.aps.edu/indian-education/johnson-omalley-program-jom/documents/JOM%20Handbook.pdf> (last visited Jan. 28, 2012).

61. 20 U.S.C. § 7701 (2006).

62. *Id.* § 7704.

63. *Id.*

64. *Id.*

65. McCoy, *supra* note 47, at 10.

66. See 20 U.S.C. §§ 6892-6893.

67. *Title 1 Grants to Local Educational Agencies*, CATALOG OF FED. DOMESTIC ASSISTANCE, <https://www.cfda.gov/?s=program&mode=form&tab=step1&id=4760e1e3d5b36d2a2c695f7e63ba96fa> (last visited Oct. 17, 2011).

68. McCoy, *supra* note 47, at 10.

Similar to public schools, BIA/BIE schools also have funding programs. Currently, the Bureau funds 183 schools serving 42,000 Indian students.⁶⁹ Of those 183 schools, fifty-nine are operated by the BIE, and the remaining 124 are operated by tribes under BIE grants.⁷⁰ BIA/BIE schools are only partially funded. Only 60% of funding requests are met, a historically low level.⁷¹

Finally, the Native American Languages Act of 1990 allows Indian languages to be taught in BIA schools.⁷² This gives tribes that operate BIA-funded schools, or that have students attending BIA schools, the right to have the tribal language part of the school's curriculum.

IV. The Crisis: Problems with American Indian Education

American Indians face educational challenges for a myriad of reasons, including cyclical poverty, a lack of parental support, a lack of education facilities, substance abuse, and language barriers. These challenges combine to produce a maelstrom of low graduation rates and large achievement gaps, two problems that plague American Indian students. In spite of Congress' educational programs, American Indians fail to meet academic standards, and the students are left with little recourse concerning their poor education.

American Indians are underperforming and failing to finish school. Professors Susan Faircloth and John Tippeconnic explored the high dropout and low graduation rates of American Indian students.⁷³ They discovered this is a problem that neither the public schools nor the BIA/BIE schools have been able to adequately resolve. Graduation rates for public schools in states with high Indian populations range from 63.8% (Oklahoma) to 30.4%

69. *The Bureau of Indian Education (BIE)*, BUREAU OF INDIAN AFFAIRS, <http://www.bia.gov/WhatWeDo/ServiceOverview/IndianEducation/index.htm> (last visited Feb. 24, 2012).

70. *Id.*

71. *Honoring the Promises: The Federal Trust Responsibility in the 21st Century*, NAT'L CONGRESS OF AM. INDIANS, 99, http://www.ncai.org/resources/ncai-publications/indian-country-budget-request/fy2012/FY2012_Budget_Support_for_Tribal_Governments.pdf (last visited Sept. 9, 2012).

72. *Id.* at 12.

73. Susan C. Faircloth & John W. Tippeconnic, *The Dropout/Graduation Crisis Among American Indian and Alaska Native Students: Failure to Respond Places the Future of Native Peoples at Risk*, CIV. RTS. PROJECT AT UCLA, 4 (Jan. 2010), <http://civilrightsproject.ucla.edu/research/k-12-education/school-dropouts/the-dropout-graduation-crisis-among-american-indian-and-alaska-native-students-failure-to-respond-places-the-future-of-native-peoples-at-risk/faircloth-tippeconnic-native-american-dropouts.pdf>.

(South Dakota), while BIA/BIE schools have rates around 60%.⁷⁴ These rates remain historically low and have failed to improve despite the reforms that have been passed since the 1960s.

Up until the 1990s, there was little public school data on American Indian dropout rates. While they were included in studies, American Indians were not listed separately as a distinct group in the statistics.⁷⁵ BIA statistics on BIA/BIE schools from 1969-1975 showed a dropout rate between 42% and 35% for high school students in all three schools systems.⁷⁶ In 1988, the BIA found that 29.2% of American Indian and Alaskan Native sophomores dropped out of school prior to graduation, which was the highest of any ethnic group.⁷⁷

In the 1990s through 2003, American Indian and Alaskan Native dropout rates ranged from between 10.2% and 17.5% nationally.⁷⁸ While these numbers represent the entire fifty states, the numbers for states with significant American Indian and Alaskan Native populations are much more troubling. As represented by Alaska, where over 26% of the student population is American Indian/Alaskan Native, only 46.8% of the American Indian and Alaskan Native students graduate.⁷⁹ This number is significantly less than the overall graduation rate of all students in Alaska, which is over 60%.⁸⁰

All twelve states having a native population of .08% or higher reflect a large graduation gap between the American Indian/Alaskan Native students and the students as a whole.⁸¹ The smallest gap (in Oklahoma) is only 7%, while the largest gap (in South Dakota) is over 45%.⁸² While the nationwide numbers are not as stark, it is painfully obvious that federal

74. *Id.* at 5, 12.

75. *Trends in High School Dropout and Completion Rates in the United States: 1972-2008*, NAT'L CTR. FOR EDUC. STATISTICS, tbl.3, n.1 (Dec. 2010), http://nces.ed.gov/pubs2011/dropout08/tables/table_03.asp.

76. BUREAU OF INDIAN AFFAIRS, *YOUNG NATIVE AMERICANS AND THEIR FAMILIES: EDUCATIONAL NEEDS ASSESSMENT AND RECOMMENDATIONS* 165 (1976).

77. BUREAU OF INDIAN AFFAIRS, U.S. DEP'T OF THE INTERIOR, *REPORT ON BIA EDUCATION* 136 (1988).

78. *Status and Trends in the Education of American Indians and Alaska Natives*, NAT'L CTR. FOR EDUC. STATS., tbl.3.3 (Sept. 9, 2012, 2:00 PM), http://nces.ed.gov/pubs2005/native_trends/ShowTable.asp?table=tables/table_3_3.asp&indicator=3.3&excel=xls/table_3_3.xls&excelsize=17&excelse=xls/table_S_3_3.xls&excelsesize=17.

79. Faircloth & Tippeconnic, *supra* note 72, at 9, 12.

80. *Id.*

81. *Id.*

82. *Id.*

policy has failed concerning education of Indian tribes. Despite the over thirty years of Indian educational reform (with increases in standards, funding, and oversight), American Indian and Alaskan Native students continue to be underserved.

The massive achievement gap between Indian students and their peers is another indicator of how deprived Indian education is in the United States. The Department of Education published a fact sheet entitled "How No Child Left Behind Benefits American Indians,"⁸³ which states that closing the achievement gap is a main priority, especially in the case of American Indian students.⁸⁴ The fact sheet also provides figures that show slight improvement among American Indians and Alaska Natives, particularly with nine-year-old reading and fourth grade math scores.⁸⁵ Nevertheless, there are still significant achievement gaps that NCLB has largely failed to close.

One study by the Northwest Regional Education Laboratory reported on the achievement gaps of eighth graders since the passage of NCLB.⁸⁶ In Alaska, the reading achievement gap between American Indian and Alaska Native students and all other students (including other minority students) was 32.93 points in 2003.⁸⁷ As of 2007, the gap was at 26.88 points.⁸⁸ While the gap did narrow, it only narrowed by just over one point per year. The smallest gap in a state with a high Indian population was in Oklahoma, where the gap was only 2.13 points as of 2007.⁸⁹ In 2003, the gap was only 4.31 points, which means that the actual progress was not significant.⁹⁰ Idaho had the greatest narrowing of reading proficiency during the study period, with a narrowing of 11.52 points.⁹¹ Still, most states narrowed slowly, and others, such as New Mexico, South Dakota, and Wyoming,

83. U.S. DEP'T OF EDUC., *HOW NO CHILD LEFT BEHIND BENEFITS AMERICAN INDIANS* (2005), available at <http://www2.ed.gov/nclb/accountability/achieve/nclb-amind.pdf>.

84. *Id.*

85. *Id.*

86. See generally STEVEN NELSON, RICHARD GREENOUGH, & NICOLE SAGE, INST. OF EDUC. SCI., U.S. DEP'T OF EDUC., *ACHIEVEMENT GAP PATTERNS OF GRADE 8 AMERICAN INDIAN AND ALASKAN NATIVE STUDENTS IN READING & MATH* (REL 2009-No. 073, July 2009), http://ies.ed.gov/ncee/edlabs/regions/northwest/pdf/REL_2009073.pdf.

87. *Id.* at 24.

88. *Id.*

89. *Id.* at 30.

90. *Id.*

91. *Id.* at 26.

actually experienced worsening achievement gaps over the four-year period.⁹²

The math achievement gaps fared even worse than the reading gap for American Indians during the study period. Oklahoma again had the smallest gap of 2.42 points, but started with a gap of only about six points.⁹³ The largest improvement was Oregon's 7.25 point narrowing, which equaled a less than two point narrowing per year.⁹⁴ Four states — Arizona, California, Idaho, and Wyoming — experienced broadening achievement gaps.⁹⁵

This significant lack of progress, especially in states where American Indians and Alaska Natives comprise a substantial percentage of the population, shows that the current laws concerning education for the American Indian students are inadequate. The laws must change. The proposed Native CLASS Act purports to provide that change as it aims to help the federal, state, local, and tribal governments address the pressing need for quality education and higher standards for students in Indian Country.

V. The Current Plan: Propositions of the Native CLASS Act

The Native CLASS Act is based on two main propositions. The first proposition is that if local Indian tribes and parents are given more direct control, it will have a positive impact on achievement, graduation rates, and the overall quality of education. The second proposition is that if American Indian students are given culturally relevant educations, complete with tribal language training, it will foster academic growth, cultural awareness, and tribal strength.

These propositions are supported by tribal entities and educational entities alike. Giving Indian tribes and parents direct control includes them in the decision-making process. Infusing tribal culture into the students' education creates a more accessible learning environment. The current draft of the Native CLASS Act sets out eight major programs to accomplish these goals in an attempt to close achievement gaps and improve graduation rates.

92. *Id.* at 28, 30-31.

93. *Id.* at 38.

94. *Id.*

95. *Id.* at 33-34, 40.

A. Technical and Linguistic Changes

First, the current bill proposes several technical changes to the language of the ESEA.⁹⁶ These technical amendments add phrases to current clauses, such as inserting “representatives of Indian tribes located in the State” within 20 U.S.C. § 6311(a), which causes the statute to read:

For any State desiring to receive a grant under this part, the State educational agency shall submit to the Secretary a plan, developed by the State educational agency, in consultation with local educational agencies, teachers, principals, pupil services personnel, administrators (including administrators of programs described in other parts of this subchapter), other staff, [representatives of Indian tribes located in the State,] and parents⁹⁷

These amendments purport to establish the tribes as important parties in the educational decision-making processes. Some amendments require states to consult with Indian tribes within the state to create plans for schools that serve Indian students.⁹⁸ By including terms such as “Indian tribes,” “tribal educational entities,” and phrases like “meaningful consultation,” the Native CLASS Act attempts to codify cooperation between federal, state, local, *and* tribal entities. Whether these technical amendments will be effective is a matter discussed in a later section.

B. Indian School Turn Around Program

Another change that the Native CLASS Act proposes is the implementation of the Indian School Turn Around Program (ISTAP).⁹⁹ This program focuses on “turning around” local schools that are located on Indian lands, helping tribes and their educational agencies increase their ability to improve achievement, and helping the tribes to use school intervention models to improve schools.¹⁰⁰ The program is targeted at elementary schools and high schools that award diplomas and also high schools that don’t award diplomas.¹⁰¹

96. S. 1262, 112th Cong. § 111 (2011).

97. 20 U.S.C. § 6311(a) (2006) (bracketed material inserted from S. 1262, 112th Cong. § 111(1)(A) (2011)).

98. S. 1262, § 111.

99. *Id.* § 111, sec. 1116A.

100. *Id.*

101. *Id.*

To qualify, an elementary school must be in the bottom 5% achievement in the state.¹⁰² High schools that do not award diplomas must also be in the bottom 5% of the state, while high schools that do award diplomas must either be in the bottom 5% of the state or have a graduation rate of less than 60%.¹⁰³ The Act does not detail how states are to identify these schools, or what standards should be used.

Once those schools are identified, the state will inform the tribes on whose land such schools are located.¹⁰⁴ The tribes can then apply for grants, at least 90% of which must be used to carry out “school intervention models.”¹⁰⁵ If a tribe or tribal education agency receives a grant under this program for a targeted school, the state and local educational agencies must still continue the current level of funding for that school.¹⁰⁶ The Act does not specify any penalties for states that do not maintain funding levels.

The state and local agencies must also enter into a cooperative agreement with the tribal entities in charge of administrative decisions. Tribal entities may possibly require personnel changes as part of the cooperative agreement.¹⁰⁷ Another aspect of the cooperative agreement is the institution of school intervention models. There are three types of models for tribes to choose from — the Transformation, Restart, and Turnaround models.¹⁰⁸

The Transformation model is a rigorous model that requires the tribes or tribal educational agencies to replace the principal of a low-performing school, incentivize and reward teachers that improve achievement, dismiss teachers that fail to improve achievement, use research to determine beneficial instruction courses, increase school hours per year by at least 300 hours, increase community involvement, and implement other initiatives as well.¹⁰⁹ The Restart model is a more basic plan where the tribe or tribal educational agency converts schools to charters or educational management organizations.¹¹⁰ The only substantive requirements under this plan are that the operator will make staffing and leadership changes, and that former students of the school will be able to attend the newly formed school.¹¹¹ The Turnaround model is similar to the Transformation model except that it

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* § 111, sec. 1116(A)(i)(2)(A)(i)-(iii).

111. *Id.* § 111, sec. 1116(A)(i)(2)(B), (C).

gives more authority to the new principal. Under the Turnaround model, the new principal has the responsibility and flexibility to determine budgets, staffing, and calendars.¹¹² In making staffing decisions, the principal must retain no more than half of the existing staff, and must justify personnel decisions to the tribe or tribal educational agency.¹¹³

If these models are implemented, and the schools fail to show state-defined progress, the tribe or tribal education agency will either have to adjust the existing model or use the Restart model to improve the school's progress.¹¹⁴

The Indian School Turn Around Program is designed to shift administrative and functional control away from state and local educational agencies and toward tribal control, which is one of the main propositions of the Native CLASS Act.

C. Tribal Education Agencies Pilot Project

The Native CLASS Act also contemplates that funding from the federal government alone will not ensure that tribes can run their schools. The Act recognizes that while some tribes have educational departments within their tribal governments, many tribes do not. To help those tribes without educational agencies in creating their own, the CLASS Act also establishes the "Tribal Education Agencies Pilot Project."¹¹⁵

This project provides grants to help up to five tribes per year develop education plans for schools associated with their tribe.¹¹⁶ The tribes applying for this program would develop an educational plan, create agreements with local educational agencies, and then implement the plan through their newly established tribal educational agency.¹¹⁷ These educational agencies would be responsible for carrying out the functions of the eligible schools.¹¹⁸

To be eligible, the tribe must show that the school either (1) receives funding from the BIA, (2) is funded through Title VII based on an American Indian student population served by the school, (3) is situated on Indian land, or (4) has a majority of American Indian or Alaska Native

112. *Id.* § 111, sec. 1116(A)(i)(3)(B).

113. *Id.* § 111, sec. 1116(A)(i)(3)(D), (E).

114. *Id.* § 111, sec. 1116(A) (j) (1), (2).

115. *Id.* § 161.

116. *Id.*

117. *Id.*

118. *Id.*

students.¹¹⁹ If the school is eligible under one of these criteria, the tribe must also prove its capacity to actually run the program and satisfy any factors required by the Secretary of Education.¹²⁰

Multiple tribes that agree to share one educational agency can apply for this pilot program.¹²¹ The Tribal Education Agencies Pilot Program is another way in which the Native CLASS Act attempts to shift the responsibility for educating tribal students toward tribes.

D. Culturally Relevant Teaching

The Act also contains provisions that relate to the second proposition of the CLASS Act, which is to provide culturally relevant education and Native language study for Indian students. While references to “culturally relevant” education and “language study” are sprinkled throughout the Act, some sections are directly pertinent to the implementation of such cultural learning.

First, Section 112 requires states to create specialized assessments for “diverse learning styles,” presumably to reflect American Indian student learning styles.¹²² Section 113 amends the ESEA by eliminating the requirement that Native language teachers be “highly qualified.”¹²³ Instead, state educational agencies are instructed to create special certifications for Native language teachers.¹²⁴

E. Training Educators

One major provision geared toward increasing culturally relevant education to Indian students is Section 121. This section amends Title II, a provision dealing with the preparation and training of educators.¹²⁵ There is currently a grant program that gives money to educational entities for the training of educators who serve high need areas.¹²⁶ The proposed amendments specifically define American Indian education as a high need area.

Another amendment requires grant applicants to prove that teachers serving schools in Indian communities will familiarize themselves with

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.* § 112.

123. *Id.* § 113.

124. *Id.*

125. 20 U.S.C. §§ 6601-6603 (2006); S. 1262, § 121 (2011).

126. 20 U.S.C. §§ 6601-6603.

those communities and use cultural-based teaching strategies for those students.¹²⁷ If the local agency does not provide a plan for implementing those strategies, the grant application will be considered incomplete.¹²⁸ The section also adds “culturally responsive” educational plans to the list of allowable uses of local agency allocation funds.¹²⁹

F. Tribal Language Grants

One of the key ways that the Native CLASS Act attempts to improve American Indian education is to increase opportunities for American Indian students to learn their tribal language and to learn school subjects in that language. The main provision that accomplishes that goal is Section 131, which creates a grant program to fund Native language training.¹³⁰ These grants are awarded for periods of at least four years and are eligible for renewal.¹³¹

Grants under this program must be used by the recipient entity to provide a minimum of ten children at least 500 hours of instruction using Native languages, to create plans to teach Native languages, and to provide training to individuals who can teach Native languages.¹³² The grants can also be used for “[l]anguage and culture camps,” development of curricula in Native languages, and other programs to advance Native language instruction.¹³³

G. Tribal Immersion

Another provision supporting Native language education is Section 164, which establishes a grant program for “Tribal Language Immersion Schools.”¹³⁴ Under an immersion program, a school must provide elementary or secondary education and must present a plan for immersion courses for an entire school.¹³⁵ The plan must give at least 900 hours of immersion instruction annually.¹³⁶ The applying schools must also provide

127. S. 1262, § 121(1)(D)(i)(II)(cc).

128. 20 U.S.C. § 6622(c)(2).

129. S. 1262, § 121(1)(E)(i)(I)(dd).

130. *Id.* § 131.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.* § 164.

135. *Id.*

136. *Id.*

a certificate of assurance from an associated tribe stating that the school in fact has the capacity to provide immersion education services.¹³⁷

The program authorizes the schools to use funds to develop a curriculum that teaches the language of the tribe served by the school, to train staff who will be teaching in the program, and to develop curricula that implements the tribal language in school courses.¹³⁸

H. Native Language Preservation

The final major provision addressing linguistic and cultural learning is Section 302, entitled "Ensuring the Survival and Continuing Vitality of Native American Languages."¹³⁹ This provision creates another grant program designed to prevent the extinction of Native American languages.¹⁴⁰

One method of Native language preservation is community language projects that combine young and old Native language speakers to allow a free flow of language learning.¹⁴¹ The funds can also be used for projects that train Native language speakers to be able to teach or be interpreters and translators of tribal language, develop print materials in Native languages, participate in television and radio, and preserve Native languages through audio video recording.¹⁴²

The final acceptable use of grant funds to preserve Native languages is the creation of "language nests," "language survival schools," and "language restoration programs."¹⁴³ The language nests are geographically centered programs that teach at least ten children under seven years old their Native language for no less than 500 hours yearly per student.¹⁴⁴ These "nests" also offer classes in Native languages to the enrolled children's parents, and makes the Native language the "dominant medium" of the nest.¹⁴⁵

Survival schools also provide a minimum of 500 hours of instruction in at least one Native language.¹⁴⁶ These schools provide instruction for a minimum of fifteen students, and the school must be those students'

137. *Id.* § 131.

138. *Id.* § 164.

139. *Id.* § 302.

140. *Id.* § 302(b).

141. *Id.* § 302(c)(A).

142. *Id.* § 302(c).

143. *Id.* § 302(c)(1)(G)(i)-(iii).

144. *Id.* § 302(c)(1)(G)(i)(I)-(III).

145. *Id.* § 302(c)(1)(G)(i)(II)-(III).

146. *Id.* § 302(c)(1)(G)(i)(I)-(III).

“principal place of instruction.”¹⁴⁷ The goal of language survival schools is for all students to become fluent in a tribal language and gain proficiency in mathematics, reading, and science.¹⁴⁸

The language restoration programs authorized by this section vary in type. They include immersion programs, language and culture camps, and language programs coordinated with local educational entities, higher education entities, and regional programs.¹⁴⁹ The restoration programs also provide training for language teachers, training on Native language teaching materials, and training for fluent Native speakers to become translators.¹⁵⁰ The program requires a panel of experts that will aid in approving applications and helping with the planning and implementation of the programs.¹⁵¹

VI. The Problems: The Shortfalls of the Current Bill

The provisions outlined above are designed to significantly improve American Indian education. While the Act signals emphasis on tribal control and cultural learning, its actual ability to provide change in these areas is doubtful. The Act falls short in three ways that will ultimately and significantly reduce its overall effectiveness: (1) the technical changes are largely symbolic, (2) the Indian Schools Turn Around Program lacks the structure and details needed to be effective, and (3) the culturally relevant educational plans are unproven in their ability to improve performance.

A. Shortfalls of the Technical Changes

First, the technical amendments that require “meaningful” consultation with tribal entities are mere semantics. The changes in terminology create only symbolic change, not practical change. Additionally, the amendments provide no guidance as to how “meaningful” shall be defined or what form the required consultation must take. Congress and administrative agencies pass thousands of laws and regulations annually, a substantial number of which apply to education. These laws and regulations address the issues currently facing schools and purport to “fix” the problems in those schools. In reality, local schools reveal just how useless many of these provisions tend to be.

147. *Id.* § 302(c)(1)(G)(ii)(I).

148. *Id.* § 302(c)(1)(G)(ii)(IV)(aa)-(bb).

149. *Id.* § 302(c)(2)(A)(i)-(vi).

150. *Id.* § 302(c)(2)(B)(i)-(iii).

151. *Id.* § 302(f)(2)(C)(i)-(iii).

For example, NCLB provided for consultation and coordination with parents for the implementation of programs under the Act.¹⁵² In actuality, the parental consultation requirements have done little to increase parental involvement. Harold Kwalwasser, former general counsel for the Los Angeles Unified School District, claims that “there is little evidence the obligations for parental consultation have improved the quality of education in Title I schools.”¹⁵³ He argues that federal education law cannot make an uninterested parent interested, even though it necessarily must be directed at those parents who are not already involved.¹⁵⁴ Marilyn Price-Mitchell and Susan Grijalva, founders of Parent Involvement Matters.org, echo Kwalwasser’s claim, stating, “PTA/PTO’s around the country find themselves with participation at an all-time low.”¹⁵⁵

If the statutory language in NCLB failed to make any significant impact on parental involvement with schools, there is little chance that similar statutory language in the Native CLASS Act will make any more of a difference concerning parental and tribal involvement. Just like the NCLB language requiring consultation with parents, the Native CLASS Act requires consultation with parents and tribal entities. If passed as currently configured, the Native CLASS Act may encourage those tribes who have a lukewarm interest in their students’ education to seek more federal funding and become somewhat involved, while those tribes that have little interest in their students’ education will probably continue to operate at status quo and leave the decision making to the state and local education entities.

The tribes that are currently active in education programs and that staff their own educational departments will continue to operate as they have previously. The only difference will be the statutory authority for their efforts. In short, the statutory consultation language, without any substantive requirements or responsibilities, will have a marginal effect on a negligible number of tribal entities. The same will be true for parental involvement. In addition to the parental involvement problem faced by all schools, the average Indian parent additionally struggles with high levels of

152. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002).

153. Harold Kwalwasser, *‘Just Right’ Parents and No Child Left Behind*, WASH. POST (July 24, 2011, 12:21 PM), http://www.washingtonpost.com/blogs/answer-sheet/post/just-right-parents-and-no-child-left-behind/2011/07/24/gIQAjXmWI_blog.html (guest article published in regular column by Valerie Strauss).

154. *Id.*

155. Marilyn Price-Mitchell & Susan Grijalva, *Developing the Fully-Engaged Parent: A Model for Understanding Parental Involvement in Education*, PARENT INVOLVEMENT MATTERS.ORG (Apr. 9, 2012), <http://www.parentinvolvementmatters.org/articles/engaged-parent.html>.

poverty and substance abuse.¹⁵⁶ These factors further inhibit parental involvement at schools. The technical amendments are vacuous because they provide no obligatory language regarding consultation and will carry little (if any) remedial significance.

B. Shortfalls of the Indian School Turn Around Program

ISTAP also contains many flaws that will undermine its effectiveness. The program is not likely to have a widespread effect on failing schools that serve American Indian students for three reasons. First, the program is similar to NCLB programs that have failed to improve schools. Second, the program may exclude deserving schools that cannot be eligible under the provision's standards. Third, the staffing changes mandated do not reflect the specialized needs of American Indian education.

First, ISTAP is similar to the NCLB School Improvement, Corrective Action, and Restructuring Timeline.¹⁵⁷ In both programs, low performing schools are identified and targeted.¹⁵⁸ Instead of three models, the NCLB program implements a three-stage process of improvement, corrective action, and restructuring.¹⁵⁹ The results of the NCLB program have been mixed. Most school districts do not fully implement the methods of corrective action or restructuring, but rather approach the problems in a limited way.¹⁶⁰ When given the option, schools under the NCLB program choose the least restrictive method and do not fully implement broad structural changes.¹⁶¹

This is instructive with regard to ISTAP, which gives schools the option to choose from three intervention models. Given the response of similarly situated failing schools under NCLB, it is unlikely that American Indian schools will embrace the sweeping changes that are truly needed. While ISTAP may eventually force schools to adjust their programs or implement the Restart model, significant time will be lost and numerous students harmed because aggressive reform is not required by the Act.

Secondly, ISTAP is very limited in its scope. Schools can only qualify if they are on Indian land and are in the bottom 5% of schools in the state; or,

156. Faircloth & Tippeconnic, *supra* note 72, at 27-29.

157. *Successful Interventions: Helping Schools Achieve Academic Success*, COMM'N ON NO CHILD LEFT BEHIND, 1 (June 9, 2006), <http://www.aspeninstitute.org/sites/default/files/content/docs/nclb/NCLBMadisonHearingReport.pdf>.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

for a diploma-awarding high school, have a 60% or lower graduation rate.¹⁶² The Act gives no guidance as to how the bottom 5% is determined. Different states have different objective standards, which would create different valuations of rankings. For instance, the ranking system of one state may put a school in the bottom 5%, while a school in another state that is substantially similar regarding lack of achievement could only be in the bottom 10%. This could lead to incongruent results, whereas between two similarly situated schools, one school could qualify while the other does not merely because of the differing standards between the states.

The scope of ISTAP is additionally narrow because it is limited to the bottom 5% of schools, which is quite a constricted selection of schools. The schools on tribal lands would be essentially competing with inner-city schools for the bottom 5%. If tribal schools do not qualify, they miss the opportunity to participate in the program. Rather than compare schools on Indian lands and determine which of those schools are in the most need, the program requires schools on Indian lands be practically the worst in the state before they can qualify.

If a school is ranked among the bottom 25% of schools, it is a good indication of that school's failure as an educational institution. This is not to say that an arbitrary line should be drawn at 25% instead of five, but if lines must be drawn, why exclude schools that need help? Allowing only the bottom 5% of all state schools to be eligible is too limited to accomplish any real reform for American Indians. Instead, schools should be selected based on the number of Indian students served along with the underperformance of the school.

Finally, ISTAP ignores the specialized needs of American Indian education in its mandated staffing changes. The CLASS Act is intended to increase tribal influence in schools. By requiring new principals for schools, the ISTAP only requires that the principals be experienced in turning schools around. There are no requirements that the principals be experienced in educating American Indian students or that any of the new staff have such experience. The staffing changes required by the Act must reflect the values of the tribe, and experience with teaching American Indians should be a factor in hiring decisions.

162. See *supra* Part V.B.

C. Shortfalls of the Culturally Relevant Educational Plans

Another pitfall appears when considering certain provisions that provide for culturally relevant educational plans. The provisions that require state agencies to craft plans in support of diverse learning styles and to develop alternate certification requirements for Native teachers are problematic for two reasons. First, developing different types of education programs for different cultures places a large burden on the states, if no responsible tribal entity can aid the state with the development. The Act fails to define “culturally responsive” education, leaving a large problem with implementation. While the federal government would most likely provide grants to help states produce these programs, the time, energy, and manpower needed to implement such programs would be vast.

Second, the downstream consequences that would flow from the implementation of such programs could cause problems for states. By creating specialized programs for different groups of students, the door opens wide for all minority groups to claim a right to programs specially crafted to accommodate their culture. States could then be in the unenviable position of creating different curriculum for different students. This would increase costs in an area that already demands continuous increases in funding and already faces the highest amount of funding cuts. States would also face the prospect of creating various teacher certification requirements depending on the applicant’s culture. This would allow minority teachers that do not qualify under regular teacher standards to qualify to teach in classrooms, while non-minorities must continue to meet the qualifications.

This presents a host of potential conflicts, not the least of which are the Equal Protection concerns that would arise from giving certain minority teachers differing standards than other minorities and non-minorities. Implementing culturally relevant education programs would burden state agencies and create downstream consequences.

It is also unproven how effective culturally relevant education is. There are copious amounts of literature calling for the implementation of such programs, claiming that the programs make schooling relevant to students and will help to improve achievement and dropout rates.¹⁶³ And yet, the factual data does not provide the support for these claims.

163. See MIKE CHARLESTON & LEIA GAYE, INDIAN NATIONS AT RISK TASK FORCE: LISTEN TO THE PEOPLE 8 (1992); Sparks, *supra* note 45, at 261; Jon Reyhner, *American Indian/Alaska Native Education: An Overview*, AM. INDIAN EDUC. (2010), http://www2.nau.edu/jar/AIE/Ind_Ed.html [hereinafter Reyhner, *Education Overview*].

For instance, Professors Castagno and Brayboy reviewed four case studies that were “exemplary” of culturally relevant education in their article, *Culturally Responsive Schooling for Indigenous Youth: A Review of the Literature*.¹⁶⁴ The case studies involved four schools: The Russian Mission School in Alaska, the Tuluksak School in Alaska, the Salish Kootenai College on the Flathead Indian Reservation in Montana, and the Warren School.¹⁶⁵ Castagno and Brayboy used these case studies as examples of how culturally relevant education strategies are being implemented.¹⁶⁶ But if those case studies are supposed to provide support for the benefits of culturally relevant education, they fell significantly short of that goal.

The case studies were published in 2005. As of 2010, the Russian Mission School was eligible for school improvement grants because it had a graduation rate beneath 60%.¹⁶⁷ Only five years earlier, the Russian Mission School was hailed as an example of successful cultural education.¹⁶⁸ The Tuluksak School is even worse off, as it is in the bottom 5% of all public schools in Alaska.¹⁶⁹ There is little published information concerning the achievement rates of the other two schools; however, the lack of achievement in the Alaska schools lends doubt to the proposition that culturally relevant teaching will lead to improvement in Indian education.

Another article (written by Professor Jon Reyhner) lauded the Sinte Gliska University on the Rosebud Reservation for encouraging teachers in training to develop culturally relevant curriculum and teaching styles.¹⁷⁰ Data reveals the supposed benefits of cultural curricula have yet to spill over into the schools on the reservation. The Todd County High School, located on the reservation, is ranked 138th out of 141 schools in STEP score average, which is the South Dakota assessment test.¹⁷¹ The school

164. Angelina E. Castagno & Bryan McKinley Jones Brayboy, *Culturally Responsive Schooling for Indigenous Youth: A Review of the Literature*, 78 REV. EDUC. RES. 941 (2008), available at <http://rer.sagepub.com/content/78/4/941.full.pdf+html>.

165. *Id.* at 982.

166. *Id.*

167. Alaska Dep’t of Educ. & Early Dev., School Improvement Grants Application: Section 1003(g) of the Elementary and Secondary Education Act at 16, 20 apdx. B (Mar. 30, 2010), available at <http://www2.ed.gov/programs/sif/summary/akapp.pdf>.

168. *Id.* at 20.

169. *Id.* at 21.

170. Reyhner, *Education Overview*, *supra* note 162.

171. *South Dakota High School Rankings*, SCHOOLDIGGER.COM, <http://www.schooldigger.com/go/SD/schoolrank.aspx?level=3> (last visited Aug. 6, 2012).

has only met one adequate yearly progress requirement in the last four years.¹⁷²

Based on the results, there is little factual data supporting the idea that an increase in culturally relevant programs will significantly improve American Indian education. This is not to say that all provisions concerning the cultural interests associated with Indian education are useless, but merely that the weight given to culturally based education, especially when implemented in a state-run school, may not be completely warranted.

VII. The Benefits: The Positive Aspects of the Current Bill

While the Native CLASS Act has many shortfalls, some of the propositions of the Act will be beneficial and will make positive steps toward improving Indian education. There are two parts of the bill that have the potential to improve Indian education — the Tribal Education Agencies Pilot Project and the provisions concerning Native language training.

A. The Benefits of the Tribal Education Agencies Pilot Project

The first beneficial proposition is the Tribal Education Agencies Pilot Project, the project designed to help tribes develop their own educational agencies. This proposition addresses the vital need to vest Indian tribes with more authority and responsibility over Indian education. The section revives an issue that arose in the 1998 ESEA when Congress authorized grants for tribal education agencies, but then failed to make the appropriations needed.¹⁷³

While many tribes do have tribal educational agencies in place, others do not. Of the 562 federally recognized Indian tribes, only over a fourth of those tribes had even a rudimentary tribal education department as of 2006.¹⁷⁴ To achieve broad transfer of authority from federal, state, and local entities to the tribes, tribal entities must be established to take on the responsibility given to the tribe.

172. *No Child Left Behind 2011 Report Card: Todd County HS*, S.D. DEP'T OF EDUC. (2011), <http://doe.sd.gov/NCLB/reports/2011/reportcard/2011school66001-01.pdf>.

173. McCoy, *supra* note 47, at 23.

174. DAWN M. MACKETY, SUSIE BACHLER, ZOE BARLEY, & LOU CICCHINELLI, AMERICAN INDIAN EDUCATION: THE ROLE OF TRIBAL EDUCATION DEPARTMENTS 3 (May 2009), available at http://www.tedna.org/articles/mcREL_tribaleducationdepts_report_09.pdf.

The creation of tribal educational departments is the key to establishing and empowering tribal control over education.¹⁷⁵ Without these departments, the task of increasing tribal autonomy is more difficult. Enacting legislation that places more authority with tribes and encourages their cooperation with government entities will create hardships on those tribes that lack an established educational department.

First, tribes may not even take advantage of the benefits the legislation offers because they do not have the educational organization needed to carry out the program. Under NCLB, tribal education agencies were given similar authority to that outlined in the CLASS Act to aid federal, state, and local educational agencies in setting education policies and standards.¹⁷⁶ It is not difficult to see, based on the low numbers of tribal educational departments in existence, that the tribes largely underutilized those programs. One reason could be that many tribes lacked the educational organization to receive such aid and therefore could not take advantage of the provisions. In contrast to the NCLB, the CLASS Act's pilot program has greater potential to be used by the tribes.

Second, tribes that do take advantage of programs and grants, but lack the organizational structure of an educational department, may experience the strain arising from a lack of educational expertise in the general tribal government. Many tribal governments may lack special expertise in education, causing the responsibility of educational policy to default to the federal, state, and local educational entities that do possess such expertise. This results in the same quandary in which the tribes currently find themselves. Because of the possibility of underutilization of programs, and the lack of educational expertise in general tribal government, the pilot program of the CLASS Act will increase tribal control of their education policies and activities by establishing competent and effective educational agencies within the tribes.

Another possible shortfall with the pilot program lies in giving discretionary power to the Secretary of Education to decide the standards that tribes must meet. This essentially makes the Secretary a final arbiter of a tribe's fitness to run their own educational programs. While oversight is important, such open-ended discretion over a tribe's fitness undermines the overarching policy of the Act, which is to encourage tribal control. Regardless of the concerns with the Secretary's control, the pilot program

175. McCoy, *supra* note 47, at 23.

176. Mackety et al., *supra* note 172, at 3.

can go a long way toward creating the infrastructure needed for tribes to control their educational interests.

B. Benefits of Native Language Instruction

The second beneficial part of the Native CLASS Act is a group of provisions that provide for Native language instruction.¹⁷⁷ The practice of teaching classes in Native languages has been implemented with great success, particularly with the Navajo tribe.¹⁷⁸ The flagship school for bilingual learning for Indian students was the Rock Point Community School in Arizona.¹⁷⁹ In the 1960s, Rock Point suffered from low morale and “abysmal” test scores.¹⁸⁰ The tribe then arranged for instruction in the Navajo language, and after some wrangling, contracted with the BIA to run the school.¹⁸¹

The Navajo language is used to teach two-thirds of all kindergarten classes, one-half of grades 1-3, one-fourth of grades 4-6, a full year of grades 7-8, and one half year in grades 9-12.¹⁸² Grades 7-12 also have a quarter of Navajo writing instruction each year.¹⁸³ The Navajo probably have the most effective language program of all the tribes, and the program yields success in academic achievement. The Rock Point Community School students were outperforming Navajo and other Indian students in Arizona based on their performance on the California Achievement Test, and in math, their achievement was near the national average.¹⁸⁴

While merely getting close to the national average is not the ultimate goal, the achievements of the Rock Point school provides evidence of what works for Indian students. While most Indian schools have continued to struggle since the 1960s, the Rock Point Community School has climbed to the upper ranks of Indian schools and serves as an example of how

177. See *supra* Part V.F.

178. Jon Reyhner, *Maintaining and Renewing Native Languages*, TEACHING INDIGENOUS LANGUAGES (2010), <http://jan.ucc.nau.edu/~jar/Main.html> [hereinafter Reyhner, *Native Languages*].

179. Jon Reyhner, *A Description of the Rock Point Community School Bilingual Education Program*, EFFECTIVE LANGUAGE EDUC. PRACTICES (2003), <http://www2.nau.edu/~jar/NAL17.html> [hereinafter Reyhner, *Bilingual Education*].

180. Cindy Yurth, ‘They Will Learn:’ Rock Point Immersion Program Helps Students Take Pride in Their Culture, NAVAJO TIMES, Nov. 23, 2011, <http://navajotimes.com/education/2011/1111/112311rockpoint.php>.

181. *Id.*

182. Reyhner, *Native Languages*, *supra* note 175.

183. *Id.*

184. Reyhner, *Bilingual Education*, *supra* note 176.

languages can make a difference in Indian education. The Rock Point school is indicative of the benefits of language education, and the provisions of the Act that support such programs, whether through language camps, language nests, or immersion schools, have the potential to improve the achievement of Indian students.

The Native CLASS Act contains proposals that have the potential to improve Indian education. On the other hand, the Act contains proposals that are merely attempts to do what has been tried before. Using the current state of Indian education as a benchmark, the latter proposals are unlikely to make a significant difference. An approach that incorporates the successful and proven strategies of Indian education while avoiding the pitfalls is needed. This would require an overhaul of Indian education policy. Of course, this would require a long-term project instead of relying on quick fixes. But the potential benefits — skyrocketing test scores, true reform, and tribal autonomy in education — are worth the effort.

VIII. A New Direction for the Future: Changes That Can Improve the CLASS Act

Both the federal government and Indian tribes are advocating for more tribal control of schools. Both entities recognize the need for culturally relevant education, language studies, and teachers that are either Native American or sympathetic to tribal communities. The challenges to these goals are coordination with other interested educational entities, community involvement, funding, and lack of tribal infrastructure to handle the administration of educational needs.

To achieve the goals of the CLASS Act while mitigating the challenges, Congress should implement a five-phase plan to dramatically change the course of Indian education. This plan would provide structure to the CLASS Act in order to more successfully implement its important provisions. The five phases are Evaluation, Trial Selection, a Five-Year Plan, Re-evaluation, and Expansion.

A. First Phase: Evaluation

Before any proposals or programs are implemented, it is important that a careful evaluation is undertaken at the outset. This evaluation would take a widespread account of the currently operating BIA/BIE schools, BIA/BIE contract schools, and public schools that are located on tribal land that have a 50% or higher Indian student enrollment. This accounting would be conducted with the help of the Department of Education, the BIA, and the state and tribal educational agencies.

The evaluation process would garner information about the relevant schools. The process should require that detailed enrollment figures be given for each school, specifying the demographics of the school, the ratio of Native students to non-Native students, tribes that are represented, and the enrollment trends over the past five years. The demographic information will allow the tribes and the federal government to determine the cultures, languages, and tribal interests that are involved with each school. The enrollment trends will provide context for future enrollment projections in order to more effectively allocate resources.

Detailed achievement records, including achievement trends, should also be required. This will allow decision makers to isolate the specific needs of each school. Details on the amount of funding the school received and the funding source (federal, state, local, or tribal) should also be required, along with detailed expenditure reports. These financial reports should cover five years.

It would also be relevant to know who has control of the school. The reports should show which schools are operated under the authority of a tribal education agency, which schools are operated by the state, and which schools are operated by the BIA or under contract with the BIA. Finally, the reports should detail what current language or cultural programs are in place at the schools and the number of students participating in those programs. The data received from this evaluation should be placed in a database by the Department of Education, and copies of reports should be sent to the relevant entities.

Once the reports are received, the Department of Education should review the reports and make predictions of the future enrollment, funding, and expenditures of the schools based on the trends. These estimations would then be sent to the responsible state, local, and/or tribal educational entities for their review. If an entity disagrees with the Department, they can submit their own estimate with sufficient evidence to support it. Once the Departments and the entities have reached a consensus on the estimations of future developments, the information-gathering phase will be complete.

The gathered information would then be organized into four categories based on the organizational nature of the school. The categories will be public schools, public schools on Indian lands, BIA schools, and BIA contract schools. Within the categories, the schools must be arranged into four tiers based on enrollment and achievement trends. Schools with declining enrollment and achievement will be designated Tier 1. Tier 2 schools will be ones with increasing enrollment and decreasing

achievement. Tier 3 will be schools with decreasing enrollment and increasing achievement, and Tier 4 schools will be schools with increases in both categories.

These tiers provide a standard for prioritizing which schools require the most immediate attention. Tier 1 schools would be in the most need of change because decline in both enrollment and achievement demonstrates that the school is steadily failing. Low achievement could not be blamed on an overburdened staff or limited resources because the decreasing enrollment acts as a control for those factors. Instead, those decreasing trends are truly indicative of a failing school, making Tier 1 schools the highest priority.

Tier 2 schools are the next priority. On its face, it would appear the combination of increasing enrollment and decreasing achievement is a worse problem than both decreasing achievement and enrollment because it could indicate increased burdens with lower results. While this is a possibility, the achievement trends could only be temporary, schools could be adjusting to the influx of new students, and the achievement trends could level out over time. Because of that possibility, Tier 2 schools get lower priority than Tier 1.

Tier 3 schools receive more priority than Tier 4 schools because with decreased enrollment, there could be a decrease in allocations of funding to the school. In addition, the school may have problems that are not readily identifiable but are contributing factors to the enrollment decreases. Tier 4 schools receive lowest priority because the increase in both achievement and enrollment show that the school is not only improving, but also is able to thrive.

This proposed evaluation phase provides a structure that is much more specific and meaningful than the formula of ISTAP. By separating the schools into categories and tiers, the prioritization of the problems the schools face becomes clearer. As opposed to the overbroad characterizations in the Turn Around Program, the evaluation phase would more aptly target needs based on real investigation and hard numbers.

B. Second Phase: Trial Selection

The next phase would build upon the information and categorization provided in the evaluation phase. It is important not to implement broad, sweeping changes without first vetting their effectiveness for American Indian students. Therefore, after the evaluation phase, the Department of Education will select target schools to serve as trial schools for a five-year

period. These schools will be selected in equal numbers from each of the four categories and from the top two Tiers within those categories.

The Department of Education will select twenty schools from each of the four categories. Within the four categories, ten schools will be selected that serve tribes but have no tribal education department. Ten others will be selected from schools that serve tribes and do have a tribal educational department. Within those two groups, half of the schools will be Tier 1 schools and the other half will be Tier 2 schools. This careful, diversified selection of schools will serve as a proper sample size for the trial study. Tribes, educational entities, and the Department of Education can determine what approaches are effective for each category of school. The ultimate goal of the CLASS Act is to enable widespread tribal autonomy over American Indian education. The only way to find effective programs to accomplish those goals is to implement and observe those programs among schools of varying needs.

When selecting the schools from the applicable categories, the Department should consider certain criteria. First, schools that currently have no culturally responsive or language programs should be given priority. To fully examine the benefits of culturally responsive teaching or Native language instruction, those programs would be best examined when freshly introduced to schools that have no such programs already in place. While schools with culturally responsive teaching or language instruction programs will not necessarily be excluded, they will be considered lower priority because it would be more difficult to evaluate any of its improvements.

The second criterion is the state in which the school is located. While the majority of Indian populations are concentrated in twelve states, there are schools that serve Indian populations across the United States. Because different states have different education systems and coordination agreements with tribes, it will be beneficial to include as many states as possible in the trial selection. This would offer a diverse sampling of regional challenges and allow the relevant entities to compare their systems to others. The Department will therefore consider if trial schools are from the same state as a selection factor.

The third criterion is the tribes the schools serve. To achieve widespread tribal autonomy, as many tribes as possible need to be included in the education improvement programs. Indian tribes have distinct cultures, languages, and tribal organizations. Life on one tribe's reservation is unique from life on another's. It is imperative that a diverse number of tribes are represented in the initial trial selection. Without tribal

diversification, determinations of what is effective would be based on a handful of tribes. Those determinations could yield particularized approaches that might not be effective for other tribes throughout the U.S.

The goal and policy behind the CLASS Act is to give tribes more community control over schools, independent of what the rest of the state or nation implements. Applying programs and policies based on other tribes would defeat the goal of local tribal control. This is why a variety of tribes of different sizes and cultures must be represented in the trial sample. Although tribal distribution may not be perfect, the information gathered can still be useful for all tribes because certain tribes will be comparable in culture and organization to the ones represented. Diversifying tribal representation will make it easier to translate those results and programs to similar tribes.

Using the guidelines of categories and tiers, and considering the criteria for selection, the Department of Education will choose the eighty schools that will be the trial subjects of the next phase. The Department will collaborate with the relevant tribal, state, and local entities to craft a five-year plan for the development of tribal autonomy over schools.

C. Third Phase: Five-Year Plan

The Five-Year Plan Phase represents the heart of the Act. It is in this phase that the overarching goals of the CLASS Act are implemented on a practical level. The individual programs are secondary to the thrust of this phase, which is to create a strategy for shifting authority and responsibility of the schools to the tribes. Where the current version of the CLASS Act has statutory language requiring tribal input and grants to fund programs, the five-year plan provides actual guidance to work toward the goal of total tribal autonomy. The tribes have asked for increased authority over their educational systems, and the federal government has expressed interest in that result as well. The CLASS Act should therefore accomplish that goal. The Five-Year Plan will be the vehicle through which that transfer of authority happens.

The first year of the plan will differ for schools in different categories. For the schools that lack a tribal education department, roughly half of the schools, the first task will be establishing these departments. This first year is when the Tribal Educational Agencies Pilot Program will be implemented. Rather than select schools by criteria set forward in Section 161, all schools selected in the Trial Selection Phase that have no associated tribal educational entity will go through the pilot program. Just like in the pilot program, the tribes will be responsible for the functions of the schools

through the newly formed education entities. As a part of the pilot program, the education entities will create plans and programs for the schools, which is the same task that the schools with already established educational departments will be faced with in year one.

The first year plans of all schools should focus on three objectives: (1) tailoring teaching styles and curricula to the needs of the tribal community, (2) establishing language-based instruction, and (3) acquiring dedicated, skilled teachers. For the first year plans, the federal, state, and local educational entities will work with the tribes to craft plans to reach these three objectives.

The first objective involves identifying the trouble areas of a specific school. In order to tailor the learning experience to the needs of the tribe, a significant amount of time must be spent analyzing the schools, interviewing staff, and interviewing students. It will also require extensive consultation with education entities and professionals to determine how best to reach this objective. The ultimate decision on how best to achieve this objective should rest with the tribal educational department, in order to truly shift authority to the tribes.

The tribal education department will also set annual achievement goals for the schools and design methods of examining the status of these goals. One of the main complaints of the achievement evaluations under NCLB for Indian students is that the tests are not tailored to the learning styles of Indian students. The tribal education departments will be able to remedy this problem by designing their own evaluation system and goals.

The second objective will depend largely on the language instruction program(s) already in place in the tribal community. Some tribes already have language instruction programs, language teachers, and members of the tribes that speak the native language. Other tribes have very few native speakers, creating a significant problem when trying to establish language instruction at the tribal schools.

This disparity in native speakers is why the tribes should be able to establish their own certification standards for language teachers. In order to meet the needs of the students, the tribes must have flexibility to make decisions that are necessary for the improvement of the schools. In implementing language programs, tribes will have the options set forth in the language sections of the ACT and can choose whether to use those programs, such as the language immersion method and culture camps.

In order to meet the goal of acquiring and retaining skilled teachers, the tribes need to establish standards by which they can measure those instructors. These evaluation standards must be established in the first year

of the Five-Year Plan. The tribes should determine what type of education, experience, cultural exposure, and certification process they would require of the teachers. The Department of Education and state educational entities should be given opportunity for input, but the ultimate decisions regarding teacher standards will be left to the tribal education department.

The tribe should also establish standards for teachers to achieve as they are currently teaching. The standards should contain processes for dismissal of teachers, and guidelines for when teachers must be dismissed. Dismissal standards should be flexible, but should also require dismissal after three consecutive years of failing to meet standards. Once again, the Department of Education and other educational entities could offer input, but the tribal education department will decide the final standards. For the first year, all current staff at the school should be left in place unless they must be terminated for good cause. All new hires should be made in accordance with the standards. This will give the tribe a year to evaluate the current staff and to hire more teachers (if necessary) in accordance with tribal standards.

In the first year of the Five-Year Plan, the Department of Education will have an official assigned to observe the schools. One observer will be assigned per state, unless the state contains more than five target schools, in which case there will be one observer for every five schools. These observers will ensure that the tribally established standards are being followed and that federal funding is being used for its intended purpose. In the first two years of the program, all funding for the school will continue at the same level as before the Five-Year Plan's implementation, and all federal funding provided for the various programs within the school will be allocated in accordance with the relevant sections of the CLASS Act. Johnson O'Malley, Impact Aid, and Chapter 1 funding will also continue in schools.

In the second year of the Five-Year Plan, the tribal education department, in coordination with the tribal government and the federal, state, and local entities, will create an allocation of funds schedule. This will require the tribe to allocate a portion of tribal revenues and general assistance funding from the federal government to the tribal educational departments. The tribe will begin paying 10% of the educational expenses in the third year, and the state and local responsibility will be reduced by 10%.

The allocation schedule should increase the tribal responsibility by 5 to 10% per year, with the end goal being that the tribe allocates funds for 20 to 30% of education expenses by the end of the Five-Year Plan. The increased responsibility of the tribe is necessary to create tribal autonomy in

tribal schools. As long as the state governments provide the overwhelming amount of funding for schools, those governments will have a strong interest in the success of those schools, causing those entities to influence tribal education. By having the tribes assume greater funding responsibility, the tribal interest in the success of their schools and children becomes much stronger. If tribes do not have the fiscal ability to allocate the needed funds, the Department of Education and Department of the Interior will work with states to supplement the funds that the tribes cannot provide.

The tribes must also evaluate teachers in the second year. Using the standards established in the first year, the tribal education department will perform an in-depth analysis of the individual teachers and whether standards were met. If a teacher fails to meet all standards, the department will have the option to either place the teacher on probation or terminate the teacher. Tribes should be given discretion in these matters as long as they make decisions based on the prescribed standards. All teaching and administrative personnel of the school will be subject to evaluation. The Department of Education observer will be present at all evaluations and decision-making meetings concerning evaluations to ensure that the established standards are controlling the decisions.

If a teacher is put on probation, they will continue their employment for the next school year. If a teacher or administrator fails to meet standards two or three years in a row, depending on the tribal education department's processes, the teacher or administrator will be dismissed, unless good cause is shown. The Five-Year Plan is designed to give maximum authority to the tribes. This will provide a trial run to establish the level educational autonomy that the tribe is willing and able to accept.

During the second, third, and fourth years, the processes implemented by the tribes will be recorded and evaluated. In the fifth year, the tribal education department and relevant entities will revisit the plans established in the first year and determine the progress of the program. If the schools have declined in achievement, the tribe will have the choice to abandon the program or repeat the Five-Year Plan by submitting new standards. If the tribes abandon the program, control of the school will be returned to the state and local education entities. If the tribe decides to repeat the plan, they will be assigned a Department of Education observer who only observes that school to ensure that the standards are followed.

If a school improved during the Five-Year Plan, the tribal education department still has the option of abandonment. They additionally have the option of continuing the program and presenting a new Five-Year Plan for

the school. The new plan will be implemented completely independent of state, local, and federal entities. An improved school will not be required to have a Department of Education observer, but will still be required to provide achievement data to the Department of Education. The tribe will also be required to increase their responsibility for educational expenses by no less than 2% every year and federal funding will continue as usual. If a school that improves in achievement over one five-year period then declines over the next five-year period, a Department observer will be sent to the school when the school has to repeat the Five-Year Plan the following period. If a school fails to improve for three consecutive years after the implementation of an observer, the tribe will return control of the school back to the entity that previously had control.

Once a school has improved in achievement for two years without an observer, that tribal education department is given complete autonomy over the school. These two years do not have to be consecutive. Besides funding, the tribe will have complete control of the school without federal oversight, and the survival of the school will depend solely on the tribe.

D. Fourth Phase: Re-evaluation

After the initial Five-Year Plans have run their course, the Department of Education, tribal education departments, the BIA, and state and local educational entities will evaluate the results from the trial schools. These entities should evaluate the programs based on three factors.

The first factor would be whether the tribes were able to operate the schools. One the most important goals of the CLASS Act is to increase tribal autonomy and give the tribes more control over their educational systems. If the tribes are able to show that they were able to run their own schools, it will be an important step towards tribal autonomy. The evaluating groups would determine the success of the tribes by whether they met the funding increases, established workable standards, made standards-based personnel choices, and were able to implement and utilize the new programs.

The second factor would be the changes in achievement of the trial schools. The achievement gaps are a primary concern of the CLASS Act. If achievement in the trial schools improves, it will show that continuing the program will be beneficial to Indian education. If achievement declines, it would show that either the plans established by the schools need adjustment or that the overall approach needs adjustment.

The evaluating groups would consider this factor with care, making sure that the achievement results are attributed to the proper source, be it the

program or individual schools. The percentage of schools that improved, remained the same, or declined should be taken into account during the evaluation.

The final factor in determining the success of the program is the number of students enrolled at the school. One purpose behind introducing culturally relevant teaching and language studies is to engage American Indian students and increase their participation and interest in school. If enrollment declines in schools after the programs are introduced, the programs have not accomplished one of their goals. A decrease in enrollment might not be dispositive as to whether the programs are successful or not, especially if achievement improves at those schools. Therefore, the enrollment numbers in schools is a factor that must be considered with the other two.

Once the factors have been considered and evaluated in light of the percentages of schools where the program succeeded and did not succeed, the group of entities will make a recommendation to Congress concerning the continuance of the program. Congress will then consider the recommendation and make a decision whether to continue the program.

E. Fifth Phase: Expansion

If the program is approved to continue by Congress, the Department of Education and the other entities will begin a new selection of schools for Five-Year Plans. Before selecting new schools for the program, the decision-makers must take into account how many schools, if any, must repeat the Five-Year Plan. The number of repeats will count toward the number of schools added into the second cycle.

The second cycle will expand on the size of the first cycle, but not drastically. The key to sustained improvement of the program will be to refrain from over committing, and then later running short on funds, leaving schools in an even worse situation. Based on this concern, the second cycle will target 100 schools, a twenty-school increase from the trial selection group. This group of one hundred will include the schools that are repeating their Five-Year Plan due to failure to meet goals. These 100 schools will go through the same process that the initial eighty schools underwent. If the program succeeds in shifting the authority of Indian education to the tribes, and the students perform according to the established standards, then the goals of the Native CLASS Act will be realized. The Five-Year Plan will ensure that the Act alters the course of Indian education for the better.

IX. Conclusion

The Native CLASS Act marks a significant effort to create widespread change for Indian education. Rather than attempt short-term solutions, the authors of the Native CLASS Act have confronted the issues and proposed broad reforms to address the steep challenges faced in Indian Country. The poor and declining graduation rates, the alarming achievement gaps, and the lack of community involvement have made it imperative that drastic steps be taken. The Native CLASS Act draws attention to the plight of Indian education and the need for reform, but the Act in its current form is not far-reaching or effective enough to truly change the course of Indian education.

Instead, it reiterates many of the programs that are failing the American Indian students under NCLB. It is a mistake to expect the policies of the past ten years to suddenly work in a new context. Some of the proposals of the Act are promising and could help improve Indian education. But the Act lacks the structure necessary to truly shift authority of the schools to the tribes.

The Native CLASS Act should retain many of the provisions that are in the current form of the Act, but should place those programs within a broader structure that will give the tribes autonomy over the schools that educate their children. The Five-Year Plan will provide tribal control, higher educational standards, and improved curricula. The Five-Year framework will create an environment for success in Indian schools, and will ensure that the children of Indian Country are no longer left behind.